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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DION R. LOVE,

Defendant and Appellant.

B287806

(Los Angeles County
Super. Ct. No. BA459611)

APPEAL from a judgment of the Superior Court of Los Angeles County, Karla D. Kerlin, Judge. Affirmed.

Michelle T. LiVecchi-Raufi, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Corey J. Robins, Deputy Attorney General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Dion Love of possession of heroin for sale, and the trial court sentenced him to seven years in prison, including a prior conviction enhancement. Mr. Love contends his admission of his prior convictions was not knowing and voluntary because the trial court did not tell him the admission would render him ineligible for probation. We disagree and affirm.

PROCEDURAL BACKGROUND¹

An information charged Love with one count of possession of heroin for sale (Health and Safety Code, § 11351), one count of robbery (Pen. Code, § 211),² and two counts of making criminal threats (§ 422, subd. (a)). The information further alleged that he sustained two strike priors (§§ 667, subd. (d), 1170.12, subd. (b)) and two prior prison term enhancements (§ 667.5, subd. (b)). The jury convicted him of possession of heroin for sale.³ The trial court sentenced him to a prison term of seven years, consisting of

¹ We do not discuss the facts underlying Love's conviction because they have no bearing on the issue presented.

² All further undesignated statutory references are to the Penal Code.

³ The jury acquitted him of the robbery and criminal threats charges. The jury also acquitted him of petty theft, which the jury was instructed on as a lesser included offense of robbery.

a three-year midterm, doubled for the prior strikes, plus one year for a prior prison term enhancement.⁴

Prior to sentencing, Love waived his right to a jury trial on the prior conviction enhancements, his privilege against compulsory self-incrimination, and his right to confront witnesses. He then admitted the prior convictions to be true. On appeal, he claims the admission was not knowing or voluntary because the trial court did not inform him that it would render him ineligible for probation.

DISCUSSION

“When a criminal defendant enters a guilty plea, the trial court is required to ensure that the plea is knowing and voluntary.” (*People v. Cross* (2015) 61 Cal.4th 164, 170.) “As a prophylactic measure, the court must inform the defendant of three constitutional rights—the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one’s accusers—and solicit a personal waiver of each.” (*Ibid.*) Proper advisement and waiver of these rights are necessary to make sure the accused has a full understanding of what the plea connotes and of its consequences. (*Ibid.*) The same requirements of advisement and waiver apply when a defendant admits the truth of a prior conviction allegation that subjects him to increased punishment. (*In re Yurko* (1974) 10 Cal.3d 857, 863.)

⁴ Although the information alleged two prior prison term enhancements, the court concluded, and the parties agreed, that one of those enhancements could not be lawfully imposed because it was not “separate” within the meaning of section 667.5, subds. (b) & (g).

In addition to the three constitutional rights mentioned above, the trial court must advise the accused of the “full penal effect of a finding of the truth of an allegation of prior convictions.” (*Cross, supra*, 61 Cal.4th at p. 170, quoting *Yurko, supra*, 10 Cal.3d at p. 865.) This includes, among other things, an advisement of the precise increase in the term or terms which may be imposed, as well as the effect on the accused’s eligibility for parole. (*Id.* at p. 864.) It also includes an advisement of the effect of an admission on probation eligibility. (*People v. Caban* (1983) 148 Cal.App.3d 706, 711.) *Yurko* error is not reversible per se. (*Cross, supra*, 61 Cal.4th at p. 171.) The test for reversal is whether “the record affirmatively shows that [the admission] is voluntary and intelligent under the totality of the circumstances.” (*Ibid.*, internal citations omitted.)

Here, the trial court erred by not advising Love – *before* taking his admission – that it would render him ineligible for probation. (*Yurko, supra*, 10 Cal.3d at p. 864 [an accused is entitled to be advised of the consequences of an admission “prior to the time the court accepts his admission.”].) However, we find the error harmless. Immediately after accepting the admission, the trial court informed Love that the admission rendered him ineligible for probation. The trial court and defense counsel explicitly discussed this as a consequence with Love present. Upon being informed by the court of this consequence, Love could have objected and asked that the admission be withdrawn. Instead, he chose to proceed knowing the effect of the admission on his probation eligibility. Accordingly, we find the admission was knowing and voluntary under the totality of the circumstances.

DISPOSITION

The judgment is affirmed.

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CURREY, J.

WE CONCUR:

WILLHITE, Acting P. J.

COLLINS, J.